IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3173 OF 2004

People's E;ucation Society & Anr.)..PETITIONERS

Versus

Abaji S. Mohite)..RESPONDENTS

Mr. P.K. Rele, Senior Advocate i/b. Piyush Shah for the Petitioners
Mr. B.K. Ashok for Respondent

CORAM: F.I. REBELLO J.
DATE :22nd December, 2004

P.C.:

. Rule. Heard forthwith.

2. The petitioner impugns the order dated 13th April, 2004 whereby the learned Industrial Court have been pleased to reject the application filed by the petitioners herein for setting aside the order which was passed exparte.

3. It is not necessary to set out the facts in detail considering that they have been set out in the order of the Industrial Court. The petitioners had engaged Advocate Shri Kothari. It appears that he had addressed a letter to the petitioners that he is withdrawing from the proceedings. After Advocate Shri Kothari withdrew from the proceedings none appeared for the petitioners on various occasions and consequently the exparte order came to be passed.

4. Various applications were moved which were rejected. The petitioners challenged these orders before this Court by Writ Petition. The petition was allowed and the learned Tribunal was directed to dispose of the application for setting aside the order on merits. The learned Industrial Court proceeded on the footing that in the evidence of Shri D.J. Gangurde, Secretary he has admitted that Mr.Shamkule was attending the case and that in the evidence of Gangurde there is admission that Shamkule was present in the Court on which date the Advocate Kothari had withdrawn. It has clearly come on record that he never personally attended the proceedings in the complaint. It transpires that the notice of withdrawal was not received by the petitioners. The learned Industrial Court itself has held so. In these circumstances ends of justice would be met if the petitioners are saddled with costs. Considering the above, the following order:-

(i). The impugned order dated 30th October, 2004 is set aside subject to the petitioners paying costs to the respondent quantified at Rs.5,000/- on or before 10th January, 2005.

(ii). The application for setting aside the exparte order is allowed. The matter is remanded back to the Industrial Court for giving opportunity to the parties to lead evidence and thereafter to dispose of the same according to law. Considering that the proceedings are of the year 1995 the learned Industrial Court is directed to dispose of the matter

on or before 30th June, 2005. On behalf of the petitioner their learned Counsel undertakes to the Court that they will not seek any adjournment and they will co-operate in completing the trial before 30th June, 2005.

(iii). Rule made absolute accordingly. No order as to costs.

(F.I.REBELLO, J.)